

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
Creation of a Low Power Radio Service)	MM Docket No. 99-25
)	
Amendment of Service and Eligibility)	MB Docket No. 07-172
Rules for FM Broadcast Translator)	RM-11338
Stations)	

To: The Commission

**REPLY COMMENTS OF KYLE MAGRILL IN
THE THIRD FURTHER NOTICE OF PROPOSED RULE MAKING**

Kyle Magrill, pursuant to the FCC Rule Section 1.401 hereby submits Reply Comments in the above captioned Third Further Notice of Proposed Rule Making ("FNPRM") wherein the FCC seeks to modify its Rules to accomplish and balance the directives of the recently enacted Local Community Radio Act of 2010 ("LCRA") with respect to the future processing of LPFM and FM translator applications.

Background:

In MB Docket No. 07-172, the Commission proposed a scheme with the expressed intention to assure availability of spectrum for both LPFM and translator use. The Commission has suggested that the only way to assure spectrum for LPFM is to dismiss all of the existing translator applications that are still pending from Auction 83 in many larger markets. Several dozen comments have been received during the most recent comment filing window, though a significant portion of these were form letters, clearly promulgated to individuals from common sources. Most of the form letter comments praised the concept of LPFM radio but gave little in the way of specific suggestions for improvement of the LPFM service or processing the existing backlog of translator applications. Other comments offered possible alternatives to the Commission's interpretations of the LCRA while still others sought to support the Commission's interpretation.

Discussion:

Several comments have stated the case for not dismissing translator applications en masse quite well. Specifically, comments filed by the National Association of Broadcasters are supported here because they present a succinct and well considered case that the methods proposed by the Commission are too drastic and would result in the needless dismissal of many translator applications with no benefit to the LPFM community. I further support comments of Mullaney Engineering, Inc. that specifically address the cut-off list method that is normally used to process applications. Mullaney points out that LPFM stations got the 'first bite of the apple' which resulted in thousands

of applications being filed and hundreds of LPFM stations being licensed before the auction 83 filing window opened. Mullaney's comments note that dismissal of existing "cut-off" translator applications violates the LCRA because that action elevates the LPFM service over the translator service since the LPFM service would be displacing valid, cut-off, translator applications.

In addition to supporting the comments of these, and others, these reply comments are intended to further the discussion with additional new ideas.

Several of the comments filed have touched on the probability that D/U ratios will be accepted in order to permit 2nd adjacency showings of non-interference. Currently, the FM Branch has a liberal waiver policy that is already in effect.

In addition to accepting some sort of 2nd adjacency showing of non-interference between translators and LPFM stations, there are currently no 2nd adjacency protections required between translators and LPFM stations, however LPFM stations are required to protect translators. This does not seem to make any sense because it puts translators in a position of potentially moving closer to LPFM stations than the reverse. This asymmetry is easily resolved by removing 2nd adjacency restrictions between LPFM stations and translators. Also, 2nd adjacency restrictions can be removed between LPFM stations as well. The LCRA also no longer requires protections of full-service or translator IF channels. The rules should be further amended to remove the IF protections from all facilities operating with powers of 100 Watts and below.

There is also no need to maintain the previously required spacing restrictions between LPFM station and translators or between LPFM stations to other LPFM stations. Contour protection methods can be employed between LPFM stations and both classes of facility. Spacing rings can be preserved to give a simple test for if an LPFM station can be allocated, but an applicant could then also employ contour protections in lieu of the simple spacing ring method. This approach is very similar to the system used in the commercial band for full service stations where those stations meeting the spacing criteria are automatically acceptable, but those that do not meet the minimum spacing can use contour methods to prove no interference exists.

The above suggestions will help level the playing field between LPFM stations and translators. If implemented, they will definitely produce thousands of new LPFM opportunities across the country, even in some of the largest cities.

Decisions made in a regulatory vacuum are dangerous and should be avoided

What has not been sufficiently covered in other comments is the fact that the current discussion is taking place in a vacuum of rules. The Commission is considering drastic action to clear spectrum without a proper framework in place to even make a reasonable guess as to how many LPFM channels are going to be available.

The technical rules for LPFM should be promulgated and approved prior to dismissal of any translator applications. The issue of how many translators can be fit into a market is based upon the technical standards in place. Since the LCRA gives the FCC permission to modify the 2nd adjacency standards for LPFM stations, it is very likely that the LPFM technical standards will be changing. It is also reasonable to expect that, with regards to 2nd adjacencies and IF frequencies, the standards will probably change significantly in ways that will permit many stations to exist where they could not if only the 3rd adjacent channel restrictions are dropped. The current process concerning possible dismissal of translator applications is the proverbial case of "putting the cart before the horse".

To attempt to determine the total number of stations possible in a location based only on the removal of 3rd channel restrictions will substantially under-predict the number of stations possible, resulting in the gratuitous dismissal of translator applications on a grand scale. I recognize that the Commission wants to move forward with the LPFM filing window as soon as possible, but I would urge the Commission to take a careful and measured approach here. The Commission should not rely upon a model that is known to be too limited to provide useful predictions and should not engage in needlessly dismissing applications where spectrum will be available. In support of the assertion that spectrum will still be available in many markets, I performed a partial search of two markets where my company has pending applications, Tampa and West Palm Beach, both Florida. 2nd adjacency D/U ratios (40dBu) like those already being used for translators were employed. A preliminary list of potentially available channels in both markets is presented in Appendix A. A very preliminary search found at least seven channels in the West Palm Beach market. Only channels in urban areas were considered. No channels were selected in rural areas, but several more available channels would be present if rural channels were considered. In addition to the 100Watt channels, an additional seven LP-10 channels could be opened in West Palm Beach's urban centers, if LP-10 stations were permitted as requested in my earlier filed comments. In the Tampa market, 22 possible LPFM channels would be available. The large number of available channels is primarily due to the fact that Tampa comprises four counties stretching more than 50 miles from the city center. As in the case of West Palm Beach, no LPFM channel was considered that would provide service to less than 10,000 people. Many of the available channels would serve populations well over 100,000. With careful site selection, some channels, such as 266-LP100, could support three or four, or more LPFM stations in various major urban centers of the Tampa market (see Appendix C). It would be impossible for one LPFM station to position itself as to preclude the use of channel 266 by other stations serving other population centers.

A set of sample maps showing possible coverage areas in the Tampa area are submitted as Appendix B. The maps shown cover only about half of the available channels. The purpose of the showing was to demonstrate that many more LPFM stations are possible than was shown by the Commission's test. Consequently, only

the first half of the potential channels were actually modeled and presented here. It is believed that all of the channels listed in Appendix A and Appendix B are good candidates for new LPFM facilities and that all of the channels would provide service to many thousands of listeners.

Possible alternatives to early dismissal of existing translator applications:

Assuming that the Commission chooses to pursue a policy aimed at dismissing so-called "blocking translator applications", the best approach would be to promulgate the full set of LPFM technical rules first. Then re-evaluate the markets using the new standards before finally making policy with regards to the auction 83 translator applications. Further, specific showings by interested parties demonstrating that LPFM channels are available should be permitted as subsequent filings.

An alternative to the two step approach above would be to promulgate the rules and concurrently continue to maintain a list of markets where translators are presumed to be destined for dismissal at some near future date. As above, the policy should permit rebuttal showings that spectrum for LPFM stations will exist based on the new technical standards.

Several comments noted that the settlement process can result in some LPFM channels being opened up. Other comments noted that some applicants have lost interest in their applications, or the applicants simply no longer exist. Before taking any steps that would result in involuntary dismissals, the Commission should contact the applicants and determine how many are still interested in their applications. Further, the possibility of voluntary dismissals has not been discussed. Some applicants may be willing to dismiss some of their applications in order to free up processing of others. For example, in the New York market, one applicant filed applications for around 50 channels. Applicants such as this that might be willing to dismiss many of their applications with the possibility of moving forward on only one or two of them. If enough applications are voluntarily dismissed, then additional markets may develop sufficient openings for LPFM stations.

The following process can be used to strike a balance between LPFM and translator needs:

1. Ascertain which translator applications are still viable.
2. Open a settlement window with the following conditions:
 - A. Settlements would proceed in spectrum restricted markets only if sufficient spectrum is freed up to permit the minimum number of LPFM stations in the market
 - B. An exception to 'A' could be made for any individual settlement proceeding that specifically frees up a new LPFM channel. This gives LPFM applicants an incentive to conserve spectrum and free up space for LPFM stations.

- C. Permit applicants to buy out or pursue voluntary dismissal of any other applicant in a market. This might be made subject to 'B' above where voluntary dismissal of applications is specifically arranged so as to free up LPFM channels and permit the processing of specific other pending applications or groups.

Conclusion:

The case for preserving auction 83 applications is based upon two distinct horns.

First, the idea that the LCRA requires the Commission to dismiss auction 83 applications to preserve spectrum for new LPFM applications is questioned. There is no specific directive in the LCRA and the FCC has a long established procedure for handling applications within a particular filing window. This procedure involves cut-off lists that preserve applications and prevent them from being subjected to over-filing by applications of subsequent windows.

Second, the model that the Commission is using to determine spectrum availability for LPFM stations has some very serious flaws that likely render it completely invalid.

Among these flaws are:

1. The model does not take into account the full market, rather relying on a sample near the city center of each market.
2. New technical standards, that are part of this proceeding, would permit many more LPFM stations and increase site selection options, but are not considered in the Commission's model. It is not possible to reasonably predict available channels until the technical standards are published.
3. The Commission could allow settlements structured to free up LPFM spectrum in crowded markets.

Respectfully submitted,

Kyle Magrill
CircuitWerkes, Inc.

APPENDIX A

A Preliminary List of Possible LPFM Channels in West Palm Beach and Tampa Florida.

Channels listed are either open without 3rd adjacent protections or they use 2nd Adjacent D/U Ratios respecting full service stations. 2nd adjacent restrictions to translators and other LPFM stations assumed to be no longer required. IF restrictions on stations operating with less than 100 Watts were assumed to be removed.

West Palm Beach, FL Possible Channels:

LP-100

205 (no check made for reading services on 3rd adjacency)

223

224

224

236

245

252

269

280

LP-10

219 (no check made for reading services on 3rd adjacency)

234

256

266

270

284

298

APPENDIX A continued

Tampa, FL Possible Channels:

LP-100

223

224

225

229

233

241

243

244

248

252

255

256

262

266

270

271

276

281

286

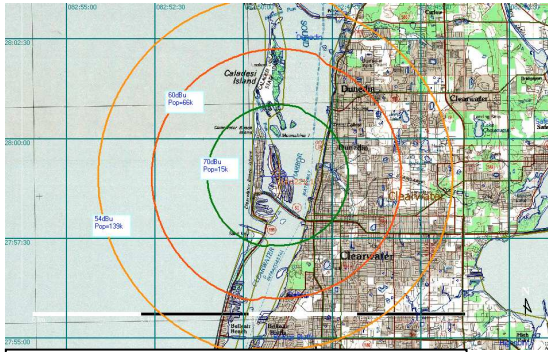
290

295

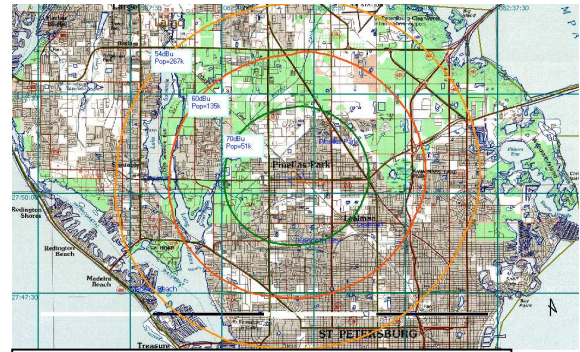
300

APPENDIX B

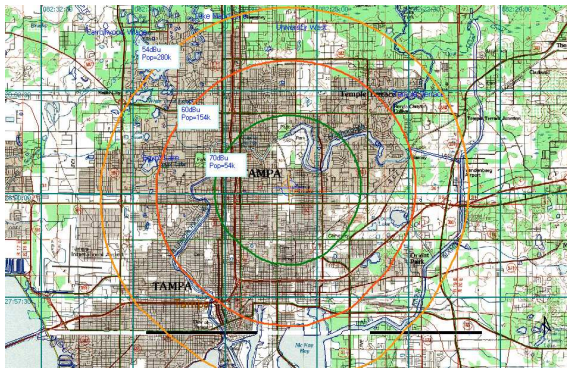
Examples of Potential LPFM Channel Coverage in the Tampa, Florida metro.



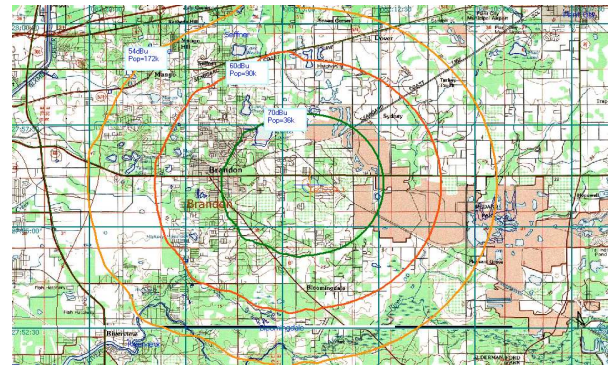
Tampa Channel 221- LP100



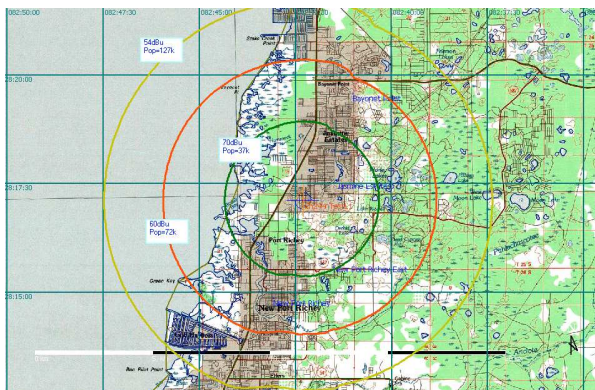
Tampa Channel 225- LP100



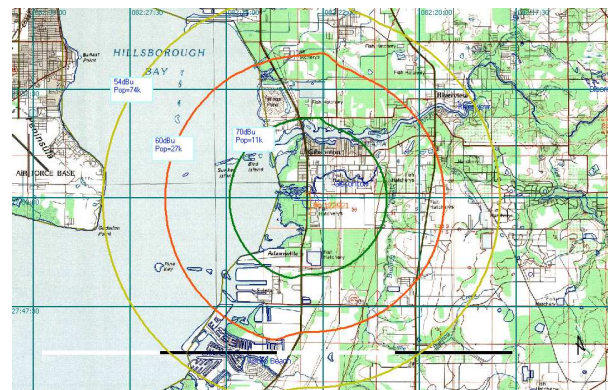
Tampa Channel 229 - LP100



Tampa Channel 233 - LP100

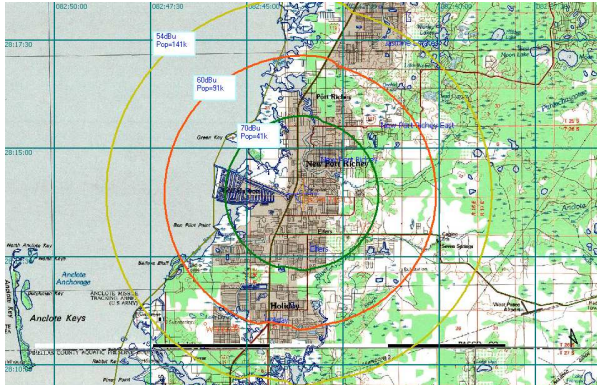


Tampa Channel 237 - LP100

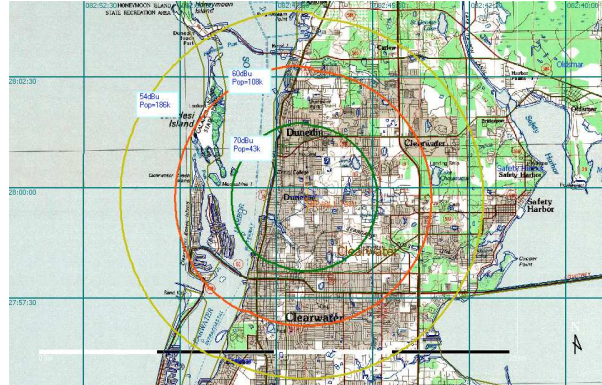


Tampa Channel 241 - LP100

APPENDIX B Continued



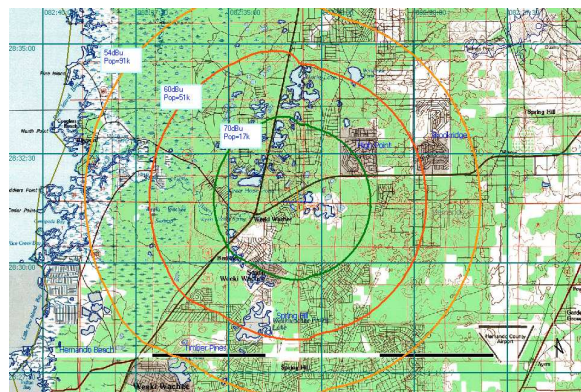
Tampa Channel 244 - LP100



Tampa Channel 248 - LP100



Tampa Channel 252 - LP100



Tampa Channel 255 - LP100



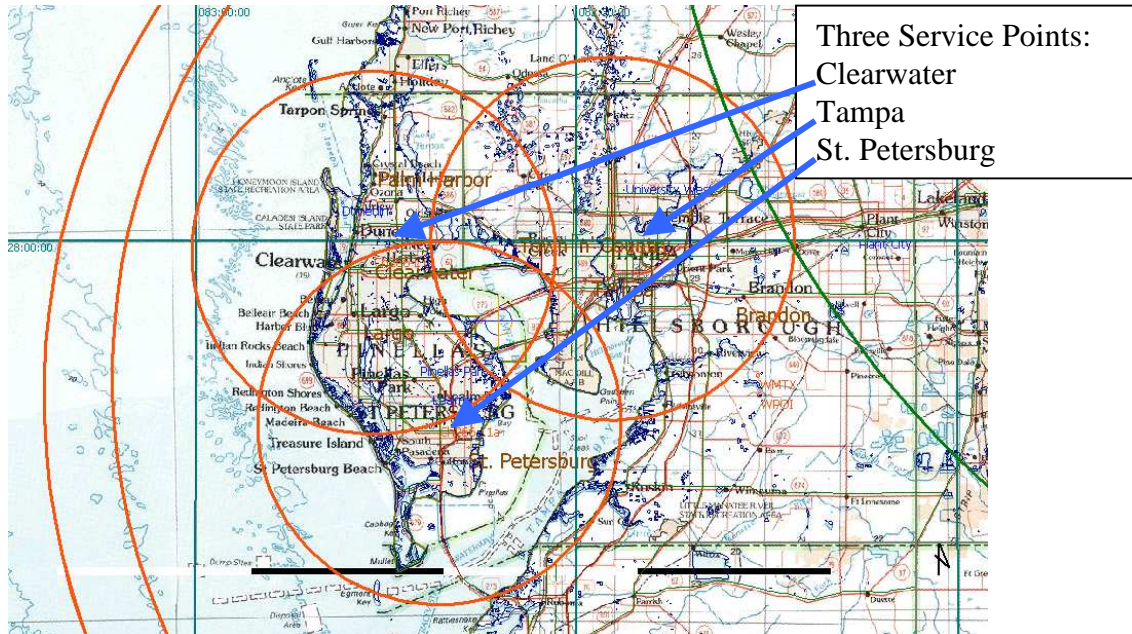
Tampa Channel 256 - LP100



Tampa Channel 266 - LP100

APPENDIX C

Examples of Possible LPFM Channel Re-use in the Tampa, Florida Market



Studied Channel is 266-LP100. 2nd adjacency D/U clearance to WMTX & WPOI

